

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6265

BILL NUMBER: SB 87

NOTE PREPARED: Nov 28, 2011

BILL AMENDED:

SUBJECT: Proof of collateral source payments.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits a court from admitting into evidence a writeoff, discount, or other deduction associated with a collateral source payment in a personal injury or wrongful death action, unless the action is an action for medical malpractice.

Effective Date: July 1, 2011.

Explanation of State Expenditures: This bill potentially increases the payments by the state when the state is a defendant in a personal injury or wrongful death action. The increased amount cannot be determined.

Background- Collateral source payments are from third parties, such as insurance companies and governments. Under current law, when a plaintiff is injured or wrongfully killed, either the plaintiff or a representative of the plaintiff may sue the defendant who caused the injury or death for any medical costs (damages) incurred. When determining the amount that the defendant should pay, the trier of fact (either the trial court or the jury) generally considers the damages incurred.

Currently, in determining the fair and reasonable costs of medical care in Indiana, the trier of fact may not permit the following collateral sources to be considered when determining the final cost:

1. Life insurance or other death benefits.
2. Insurance benefits that the plaintiff's family directly paid.
3. Any federal, state, or local government payments.

As proposed, any difference between the discounted payments that the insurance company paid that are less than the full amount of the medical damage could not be deducted from the full cost of damages.

As an example, in a recent Indiana Supreme Court Case, \$11,570 was determined to be the amount of the damages. However, the court then ruled that since the plaintiff's insurance company received a \$4,750 discount from the plaintiff's medical providers, the plaintiff's award was reduced by that discount to \$6,820.

As proposed the defendant would pay the full \$11,570. If the state was the defendant in this case, the state would pay an additional \$4,750.

The Office of the Attorney General reports that the state of Indiana paid the following amounts between FY 2006 and FY 2011 in tort claims and lawsuits.

Tort Payments, Settlements, and Judgments (in \$M) Made By State of Indiana							
	Account No.	2006	2007	2008	2009	2010	2011
Tort Payments *	18730	\$4.80	\$10.40	\$5.60	\$4.14	\$3.76	\$6.50
Tort Settlements & Judgements **	18740	\$1.14	\$1.02	\$0.98	\$0.93	\$0.90	\$1.15
Totals		\$5.94	\$11.42	\$6.58	\$5.07	\$4.66	\$7.65
* Tort payments are approved by the Attorney General after a plaintiff files a tort claim notice and staff in the Attorney General examine the claim and approve the payments.							
** Tort settlements and judgments are paid when the Attorney General denies the claim and the case proceeds to court.							

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues: This bill could increase payments to plaintiffs when a local unit of government is a defendant in a personal injury or wrongful death action. (See *Explanation of State Expenditures*.)

State Agencies Affected: State units.

Local Agencies Affected: Counties and municipalities.

Information Sources: Stanley v. Walker, Cause No. 41S01-0810-CV-539 (Ind. 2009); State Auditor Account Number 18730 and 18740 Tort Payments, Settlements & Judgements.

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